

customer but XO has had to issue credits to this same customer since it is unable to utilize the facility in its entirety. Second, XO is realizing significant revenue loss from the services that Verizon PA has failed to release during this extended time period. Third, the paging customer has informed XO that it refuses to place additional orders with XO until this impasse can be resolved with Verizon PA.⁵⁴⁹

XO also asserts that it has amply demonstrated in this proceeding's technical conferences that Verizon PA admitted that the DID numbers could be ported under applicable LNP guidelines.⁵⁵⁰ XO further asserts that Verizon PA is capable of porting the requested numbers by modifying its billing databases so that the customer's service records are shifted from CABS to CRIS system as is done in New York.⁵⁵¹

4. Discussion

a. Local Number Portability

In its Final Comments, Verizon PA further explains the number portability situation as alleged by XO. First, Verizon PA admits that it initially was unable to port the requested numbers to XO.⁵⁵² Verizon PA states that paging companies are treated as carriers in Pennsylvania; thus, Verizon PA keeps their records in its CABS, not in its end user data systems, CRIS.⁵⁵³ Therefore, when XO attempted to initiate porting of the customer's numbers, the carrier system where the customer's records are kept could not

⁵⁴⁹ XO 2/12/01 Comments at 2; 2/23/01 Tr. at 119-21.

⁵⁵⁰ XO 4/18/01 Brief at 19.

⁵⁵¹ Id.; 4/25/01 Tr. at 77; 2/23/01 Tr. at 142.

⁵⁵² Verizon PA 4/18/01 Comments at 50.

⁵⁵³ Id.; 4/25/01 Tr. at 78; 2/23/01 Tr. at 125.

be accessed using the ordering procedures for end user number porting.⁵⁵⁴ In addition, the CRIS and the CABS systems are parallel systems that do not interact with each other.⁵⁵⁵

To resolve this issue, Verizon PA explains that it now has modified CABS to accept local number portability provisioning orders as of April 9, 2001.⁵⁵⁶ Also, the modification is effective throughout the former Bell Atlantic footprint.⁵⁵⁷ In light of this modification, Verizon PA has been working with XO and the customer to ensure that the number porting of 100,000 DID numbers proceeds smoothly. The companies have developed a schedule to accommodate the necessary work activities to facilitate the successful porting of such a large quantity of numbers. Verizon PA expects the process to accommodate 5,000 numbers per day and to be completed by mid-June 2001.⁵⁵⁸

b. Premature Disconnects Relating to Local Number Portability

XO also contends that Verizon PA has not met this checklist item because Verizon PA prematurely disconnects ported telephone numbers.⁵⁵⁹ XO claims that Verizon PA disconnects ported telephone numbers hours before the scheduled time causing customers

⁵⁵⁴ Verizon PA 4/18/01 Comments at 50.

⁵⁵⁵ Id.; 2/23/01 Tr. at 126.

⁵⁵⁶ 4/25/01 Tr. at 69; 2/23/01 Tr. at 133-34 (Verizon PA states that the CABS system has software releases every other month – December, February and April. Verizon PA also states that by the time it was able to define the appropriate modification to the system for XO's request, the next available release date was the April release).

⁵⁵⁷ Id. at 51; Cklist Supp. Dec. at ¶ 156.

⁵⁵⁸ Id.; Supp. Cklist Dec. at ¶¶ 157, 158 (Verizon PA and XO have agreed to the porting of 5,000 numbers every Monday, Wednesday and Friday, beginning on May 2, 2001. XO will provide the telephone numbers to be ported two weeks prior to the XO-requested due date. Based on the foregoing schedule, the parties expect that the porting of all of the customer's numbers will be completed by mid-June.) Supp. Cklist Dec. at ¶ 158; 4/25/01 Tr. at 70.

⁵⁵⁹ 3/7/01 Tr. at 32-56; XO Exh. 11 & 12.

to be without service. Since January 2001, XO estimates that 15-20 premature disconnects have occurred, especially with large customers.⁵⁶⁰

Verizon PA counters that XO does not properly report service outages due to alleged premature migrations. Verizon PA claims that the only way it becomes aware of service outages in connection with migrations is through reports by CLECs.⁵⁶¹ Without a timely report, Verizon PA cannot recognize that a service outage has occurred and determine whether it was the result of a premature disconnect caused by Verizon PA.⁵⁶² Verizon PA claims that as a result of the discussions triggered by the technical conferences, Verizon PA and XO now agree to make timely reports using the 24 hour a day hot line. In addition, the parties agreed to review processes and procedures of both companies to minimize any service outages that are occurring.⁵⁶³

The PAPUC initially was concerned about the significant time period that elapsed between the competitor's request for portability and the actual implementation of porting. Verizon PA explains that XO's request to port 100,000 numbers was an issue of first impression.⁵⁶⁴ Because XO's request was the first one to port a paging customer's DID numbers, a system change to Verizon PA's CABS system involved a long lead-time. This resulted in a modification occurring in April 2001, almost nine months after XO initiated its porting request with Verizon PA.⁵⁶⁵ However, the PAPUC's concern is

⁵⁶⁰ 3/7/01 Tr. at 36.

⁵⁶¹ Verizon PA 4/18/01 Brief at 52; 3/22/01 Tr. at 156-57.

⁵⁶² Verizon PA 4/18/01 Brief at 52.

⁵⁶³ Id.

⁵⁶⁴ 4/25/01 Tr. at 79.

⁵⁶⁵ Id. at 79-80; 2/23/01 Tr. at 110-11.

alleviated since this modification now benefits XO as well as other CLECs operating in Pennsylvania who request to port a paging company's numbers.⁵⁶⁶

Also, the PAPUC notes that it is Verizon PA that has established that a request for 200 or more numbers to be ported receives a "project status."⁵⁶⁷ The impact of this cut-off is that the porting request, which Verizon PA admits happens frequently,⁵⁶⁸ does not flow automatically. The additional impact of the "project status" is that no metric is applied to orders for LNP of 200 numbers or more.⁵⁶⁹ Rather, the requests are implemented according to negotiated time frames agreed to by Verizon PA and the competing carrier.⁵⁷⁰

Further, the PAPUC finds that the premature disconnect problem does not suggest noncompliance with this checklist item. Rather, it appears to be specific to XO, somewhat infrequent in number and limited in duration. Also, the PAPUC notes that the parties have agreed to work together to minimize future service outages.

Finally, for the one metric associated with Checklist item 11, we note that Verizon PA has met the standard 100 % of the time during the commercial availability period based upon the C2C Aggregate Reports that Verizon Pa files monthly with the PAPUC.

⁵⁶⁶ Id. at 89.

⁵⁶⁷ Verizon PA 4/18/01 Brief at 51; Supp. Cklist Dec. at ¶157; 4/25/01 Tr. at 76.

⁵⁶⁸ 4/25/01 Tr. at 86.

⁵⁶⁹ Id.

⁵⁷⁰ Id.

5. Conclusion

Verizon PA has demonstrated that it is in compliance with this Checklist item.

M. Checklist Item 12 -- Dialing Parity

1. Description of the Checklist Item

Checklist item 12 requires a BOC to provide access or interconnection which includes “nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity⁵⁷¹ in accordance with the requirements of section 251(b)(3).” 47 U.S.C. §271(c)(2)(B)(xii). Section 251(b)(3) requires that all local exchange carriers provide competing providers of telephone exchange service and telephone toll service with “dialing parity.” Also, local exchange carriers have to permit competing providers nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listing, with no unreasonable dialing delays. 47 U.S.C. §251(b)(3).

2. Standard of Review

The FCC precludes the use of access codes to route calls among competing providers of telephone exchange service⁵⁷² and requires LECs to permit telephone

⁵⁷¹ Dialing parity means that “a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation from among two or more telecommunications services (including such local exchange carrier).” 47 U.S.C. § 153(15).

⁵⁷² In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket Nos. 96-98, 95-185, NSD File No. 96-8 (August 8, 1996) (Second Report and Order) ¶¶ 30,33.

exchange service customers within a defined local calling area to dial the same number of digits to make a local call, notwithstanding the identity of the customer or called party's local telephone service provider.⁵⁷³

3. Summary of Evidence before PAPUC

a. Verizon PA

Verizon PA states that it provides local dialing parity to CLECs that purchase unbundled local switching from Verizon PA or resell Verizon PA's retail service.⁵⁷⁴ Verizon PA also provides the information and service necessary for CLECs to implement local dialing parity within their own switches.⁵⁷⁵ Local dialing parity provided by Verizon PA ensures that a CLEC's local service customers are not required to dial more digits than a Verizon PA end user to complete a similar call, unless such requirement is imposed by a CLEC.⁵⁷⁶ Further, Verizon PA states that it does not cause a CLEC's local service customers to experience post-dialing delay, call completion rate or transmission quality that is inferior to that experienced by its own end users.⁵⁷⁷

Verizon PA provides local dialing parity at no additional charge, as an inherent component of its network interconnection arrangements with competitive carriers pursuant to interconnection agreements and tariff.⁵⁷⁸ Verizon PA states that it has

⁵⁷³ Id. at ¶¶ 35 ,68.

⁵⁷⁴ Cklist Dec. at ¶¶ 390-395.

⁵⁷⁵ Id.

⁵⁷⁶ Id. at ¶ 392.

⁵⁷⁷ Id.; 2/22/01 Tr. at 12-14.

⁵⁷⁸ Cklist Dec. at ¶ 393 & Cklist Att. 202; Pa. P.U.C.-No. 218, Network Interconnection Services Tariff, Section 1. A.

exchanged approximately 16.4 billion minutes of traffic with CLECs over local interconnection trunks from January through October 2000.⁵⁷⁹ All of the local calls handled under these arrangements were completed with local dialing parity.⁵⁸⁰

b. CLECs

No active participant challenges Verizon PA's compliance with Checklist item 12.

4. Discussion

The PAPUC finds that Verizon PA is legally obligated to provide dialing parity under its interconnection agreements and tariffs.⁵⁸¹ We find that Verizon PA demonstrates that it provides nondiscriminatory access to services that are necessary to allow a requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3). Eleven parties have stipulated that Verizon PA has met the requirements of Checklist item 12, or that they will not present evidence to the contrary.⁵⁸²

5. Conclusion

For the foregoing reasons, we verify compliance with Checklist item 12.

⁵⁷⁹ Cklist Dec. at ¶394.

⁵⁸⁰ Id.

⁵⁸¹ Cklist Dec. at ¶ 393 & Verizon PA Att. 202; Pa. P.U.C.-No. 218, Network Interconnection Services Tariff, Section 1.A.

⁵⁸² Verizon PA 4/18/01 Comments at 52.

N. Checklist Item 13 – Reciprocal Compensation

1. Description of the Checklist Item

Checklist item 13 requires that a BOC provide reciprocal compensation arrangements consistent with the requirements of section 252(d)(2) of TA-96. Under section 252(d)(2), a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (1) such terms and conditions provide for each carrier's mutual and reciprocal recovery of costs associated with the transport and termination of calls on each carrier's network that originate on the other carrier's network, and (2) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating these calls.⁵⁸³ A second reciprocal compensation issue involves "00-" calls.

2. Standard of Review

The FCC concludes that Checklist item 13 has been met if a BOC shows that: (1) it has reciprocal compensation arrangements in place in accordance with section 252(d)(2) of TA-96, and (2) it is making timely reciprocal compensation payments.⁵⁸⁴

In the Massachusetts section 271 proceeding, the FCC addressed reciprocal compensation specifically with respect to Internet Service Provider ("ISP") traffic and its impact on the section 271 process.⁵⁸⁵ Because the FCC had yet to rule on the status of ISP-bound traffic at the time of the Verizon MA 271 Order, the FCC asserted that a

⁵⁸³ 47 U.S.C. § 252(d)(2).

⁵⁸⁴ Verizon MA 271 Order at ¶ 214; SWBT KS/OK 271 Order at ¶ 249; SWBT TX 271 Order at ¶ 379; BA NY 271 Order at ¶ 376.

⁵⁸⁵ Verizon MA 271 Order at ¶ 215.

BOC's refusal to pay reciprocal compensation for ISP-bound traffic does not violate Checklist item 13.⁵⁸⁶

The FCC has since attempted to clarify the issue of whether ISP-bound traffic is subject to reciprocal compensation. On April 27, 2001, the FCC released an order finding that ISP calls are information access traffic under section 251(g) of TA-96 and not subject to reciprocal compensation. Instead, this traffic is predominantly interstate and is within the jurisdiction of the FCC under section 201 of TA-96.⁵⁸⁷ In addition, the FCC adopted a 3-year transitional recovery scheme to phase out reciprocal compensation for these calls.⁵⁸⁸ The FCC also announced its preference for a "bill and keep"⁵⁸⁹ regime as a permanent replacement to the current system, effective after the 3-year phase out. However, the FCC felt that further inquiry into the "bill and keep" regime in the form of a Notice of Proposed Rulemaking was necessary before adopting such a regime.⁵⁹⁰

⁵⁸⁶ Under a prior FCC order, ISP-bound traffic was "largely interstate" and not subject to the reciprocal compensation provisions of TA-96. See Implementation of Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689 at 3706, ¶ 26 n. 87 (1999), rev'd and remanded sub nom. Bell Atlantic Tel. Cos. V. FCC, 206 F.3d 1 (D.C. Cir. 2000). However, the United States Court of Appeals for the District of Columbia felt that the FCC did not provide a satisfactory explanation as to why it classified ISP calls as interstate traffic. Accordingly, the court vacated the Order and remanded it back to the FCC. Bell Atlantic Tel. Cos. v. FCC, 206 F.3d 1 (D.C. Cir. 2000). At the time of the Verizon MA 271 Order, the FCC was still reconsidering the matter.

⁵⁸⁷ See In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order in CC Docket No. 99-68 FCC 01-131 ¶ 3 (released April 27, 2001) (ISP Reciprocal Compensation Remand Order).

⁵⁸⁸ ISP Reciprocal Compensation Remand Order at ¶¶ 7 and 8.

⁵⁸⁹ "Bill and keep" refers to an arrangement in which neither of the two interconnecting networks charges the other for terminating traffic originating on the network of the other. Instead, each network recovers from its own end-users the cost of both originating traffic that it delivers to the other network and terminating traffic that it receives from the other network. However, this regime does not preclude charges for transport of traffic between carrier networks.

⁵⁹⁰ ISP Reciprocal Compensation Remand Order at ¶ 6.

Given the ISP Reciprocal Compensation Remand Order and the FCC's previous approach set forth in the Verizon MA 271 Order, it appears that the FCC will continue to find that a BOC's failure to provide reciprocal compensation for ISP-bound traffic does not violate Checklist item 13.

3. Summary of the Evidence Before PAPUC

a. Verizon PA

Verizon PA states it has complied with Checklist item 13. Verizon PA offers reciprocal compensation arrangements to CLECs pursuant to interconnection agreements and tariff in accordance with the 1996 Act and the relevant commission orders.⁵⁹¹ As of October 31, 2000, Verizon PA was paying reciprocal compensation to 24 CLECs, 13 broadband CMRS providers, and nine paging companies.⁵⁹² During the first ten months of 2000, Verizon PA paid approximately \$35 million in reciprocal compensation to the relevant CLECs. In contrast, during this same period, Verizon PA collected only \$3 million in reciprocal compensation from the relevant CLECs.⁵⁹³

Verizon PA has indicated that its current practice of paying reciprocal compensation for Internet-bound traffic will change as a result of the FCC's ISP Reciprocal Compensation Remand Order. To the extent that Verizon PA exchanging both Internet-bound traffic and traffic properly subject to reciprocal compensation under TA-96, Verizon PA will apply the presumption established in the ISP Reciprocal Compensation Remand Order that any such traffic exceeding a 3:1 ration of terminating to originating traffic is Internet-bound traffic. Verizon PA will then implement the

⁵⁹¹ Cklist Dec. at ¶ 397.

⁵⁹² Id. at ¶ 399.

⁵⁹³ Id. at ¶ 400.

appropriate rate caps and payment limits of reciprocal compensation for the Internet-bound traffic. In addition, provisions of existing interconnection agreements regarding rates paid for exchange of Internet-bound traffic are no longer available for opt-in under section 251(i).⁵⁹⁴

b. XO

Verizon PA previously attempted to negotiate a lower reciprocal compensation rate for the termination of customer paging traffic on the XO network. However, Verizon PA has since, on the record, withdrawn its request that XO agree to the lower rate for this traffic.⁵⁹⁵

c. MCIW

MCIW initially asserted that Verizon PA owed MCIW reciprocal compensation. However, Verizon PA and MCIW have since verified, on the record, that Verizon PA is current with these payments.⁵⁹⁶

d. e.spire

Verizon PA owes a “de minimis” amount of reciprocal compensation to e.spire in Pennsylvania.⁵⁹⁷ However, based on e.spire’s experience in other states where Verizon

⁵⁹⁴ 5/16/01 Verizon PA Response to 5/11/01 Staff Data Request Re: Reciprocal Comp.

⁵⁹⁵ 3/15/01 Tr. at 72.

⁵⁹⁶ Id. at 137-39.

⁵⁹⁷ 3/16/01 Resp. of e.Spire to 3/12/01 Verizon PA Set I, Interr. No. 3 and 4.

PA allegedly owes a substantial amount of reciprocal compensation to the company, e.spire fears that the trend in other states will continue in Pennsylvania.

e. AT&T

In the Global Order, the PAPUC directed that “calls to local ISPs shall be considered local and that reciprocal compensation shall be applied to all ISP traffic for all future interconnection agreements filed with [the PAPUC].”⁵⁹⁸ According to AT&T, the FCC’s ISP Reciprocal Compensation Remand Order “does not preempt any state Commission decision regarding compensation for ISP-bound traffic for the period of time prior to the effective date of the interim regime.”⁵⁹⁹ Verizon PA’s response to the relevant Staff Data Request does not address these requirements.

Moreover, Verizon PA’s response to the relevant staff data request suggests that Verizon PA intends to act unilaterally to effect the changes in reciprocal compensation arrangements. AT&T argues that such action would violate the ISP Reciprocal Compensation Remand Order as well as the provisions of existing interconnection agreements. According to AT&T, the ISP Reciprocal Compensation Remand Order emphasizes that the interim reciprocal compensation regime adopted “does not alter existing contractual obligations, except to the extent the parties are entitled to invoke contractual change-of-law provisions.”⁶⁰⁰

AT&T adds that the current interconnection agreement between TCG and Verizon PA contains a “change of law” provision specifying that “the parties agree that any modification required by applicable laws ... that affects the parties’ receipt of reciprocal

⁵⁹⁸ 5/23/01 AT&T Resp. to 5/11/01 Staff Data Request Re: Reciprocal Comp., citing Global Order at 211.

⁵⁹⁹ Id., citing ISP Reciprocal Compensation Remand Order at ¶ 82.

⁶⁰⁰ Id.

compensation for the transportation and termination of local traffic shall be deemed to be a modification of a material term that requires immediate good faith re-negotiation between the parties.”⁶⁰¹ Thus, even if Verizon PA deems the ISP Reciprocal Compensation Remand Order as a “change of law” affecting the terms of the interconnection agreement, it should continue to pay reciprocal compensation at the rates established by the PAPUC pending renegotiation and subsequent PAPUC approval of that agreement until the parties have negotiated an alternative payment arrangement.

g. Sprint/United

Sprint/United raised the “00-“ issue, alleging that Verizon PA is reluctant to pay reciprocal compensation for certain local calls such as “00- calls.” With these calls, a Sprint/United long-distance customer dials “00-” and is connected with the Sprint/United long-distance operator. Sprint/United argues that these calls should be local if the long-distance operator terminates the call on a different LEC network in the same local area where the call originated. If so, Sprint/United asserts that the call would be eligible for reciprocal compensation.⁶⁰² According to Sprint/United, Verizon PA uses a “default jurisdiction” for these calls; Verizon PA treats them as access chargeable regardless of where they terminate.⁶⁰³ On that basis, Sprint/United asserts that Verizon PA has not complied with Checklist item 13.

⁶⁰¹ Id., citing TCG-Bell Atlantic Interconnection Agreement, § 28.4.

⁶⁰² 3/15/01 Tr. at 37, 38.

⁶⁰³ Id. at 48.

Sprint/United states that Verizon PA's action in response to the FCC's ISP Reciprocal Compensation Remand Order does not contribute Sprint/United's concern that Verizon PA has failed to comply with Checklist item 13.⁶⁰⁴

4. Discussion

The record demonstrates that Verizon PA has complied with Checklist item 13 – reciprocal compensation. Based on substantial evidence presented in the written materials and at the technical conferences, Verizon PA has reciprocal compensation arrangements in place and is making timely reciprocal compensation payments.

Concerning e.spire, the amount of reciprocal compensation that Verizon PA allegedly owes to e.spire in Pennsylvania is “de minimis.” In addition, e.spire did not file any comments nor did it provide any evidence on the record that VERIZON PA has failed to pay reciprocal compensation in Pennsylvania.

Further, we find that Verizon PA's intent to change its current practice with respect to payment of reciprocal compensation for ISP calls does not violate Checklist item 13.⁶⁰⁵ With respect to Sprint/United, the “00-calls” do not appear to be local calls subject to reciprocal compensation. One, even if these calls are terminated in the same area where the call originated, these calls are first funneled through a long-distance operator. Two, these calls are priced at interstate rates as per an interstate tariff.

5. Conclusion

⁶⁰⁴ 5/23/01 Sprint/United Response to 5/11/01 Staff Data Request Re: Reciprocal Comp.

⁶⁰⁵ Although the Commission's Global Order directed that ISP calls were to be treated as local calls in Pennsylvania for intercarrier compensation purposes, Verizon PA's possible non-compliance with the Global Order on this issue is irrelevant for Checklist item 13 purposes. Given the findings in the FCC's ISP Reciprocal Compensation Order and the FCC's comments in the Verizon MA 271 Order concerning

For the foregoing reasons, we verify compliance with Checklist item 13.

O. Checklist Item 14 -- Resale

1. Description of Checklist Item

Section 251(c)(4) of TA-96 imposes on LECs the duty to offer for resale “any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.” 47 U.S.C. § 251(c)(4). Section 271(c)(2)(B)(xiv) of TA-96 requires a LEC to make “telecommunications services...available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).” 47 U.S.C. § 271(c)(2)(B)(xiv).

A LEC must also demonstrate that it provides nondiscriminatory access to OSS for the resale of its retail telecommunications services. 47 U.S.C. §§ 271(c)(2)(B)(ii)-(xiv). Specific issues pertaining to Verizon PA’s OSS performance under the standards established in Pennsylvania’s C2C Guidelines for the provisioning of resold UNEs and services are addressed in sections specifically addressing UNEs and in the section devoted to OSS. Moreover, timely and accurate billing is an important aspect of the competitive market place for resold services. For our full discussion, see the OSS segment of this Consultative Report. As will be explained in more detail in that segment, we believe that Verizon Pa’s commitment to electronic bills, coupled with new incentives, is sufficient for the purposes of a 271 review.

the relationship of reciprocal compensation for ISP calls to Section 271, Verizon PA’s change of policy with respect to reciprocal compensation for these calls does not violate Checklist item 13.

2. Standard of Review

The FCC requires a BOC to commit in its interconnection agreement and tariffs to make its retail services available to competing carriers at wholesale rates without unreasonable or discriminatory conditions or limitations. At the same time, we note here that the FCC has not yet addressed the full impact of the federal court's ASCENT decision upon a BOC's resale obligations.

3. Summary of the Evidence Before PAPUC

a. Verizon PA

Verizon PA states that it has complied with Checklist item 14. See Dec. ¶ 401-437. Verizon PA offers for resale, at wholesale rates established by the Commission, all telecommunications services it provides at retail to subscribers who are not telecommunications carriers. Dec. ¶402. The applicable wholesale discount was established by PAPUC at Docket No. R-00963578 (Order entered February 6, 1997) (Wholesale Discount Order). Our Wholesale Discount Order set the applicable discount at 25.69% with operator services and 23.43% if Verizon PA provides operator services.⁶⁰⁶

Verizon PA states that it provides reseller support with automated access to its OSS for pre-ordering and ordering activities for resold services. Checklist ¶ 414. Verizon PA's Repair Trouble Administration System provides resellers with the ability to test resold lines for trouble, submit trouble reports to Verizon PA, check status, trouble history and close out trouble reports. Checklist Dec. ¶ 415. Verizon PA also provides

⁶⁰⁶ The wholesale discount for resale of Verizon PA's retail services is 18.43% with operator services and 20.69% without operator services, plus an additional 5% discount for those resellers agreeing to indemnify Verizon PA for the applicable Pennsylvania gross receipts tax. The Bell Atlantic/GTE Merger conditions contain resale discount provisions which supplement provisions applicable for Pennsylvania. See FCC's Order in CC Docket No. 98-184 and ¶¶ 36-38 of Appendix D.

formal training to resellers to help them understand and sell its services and has an Account Management group responsible for coordinating all aspects of the reseller's business dealings.

Resale restrictions, which Verizon PA asserts are reasonable, appear at Tariff PA PUC No. 1, Section 1, Sheet 4A. Section 251(c)(4)(B) of TA-96 prohibits “unreasonable or discriminatory conditions or limitations” on resale, with the exception that “a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.”

Verizon PA states that its provisioning and maintenance/repair performance for resale is at parity with, or exceeds, the standards for retail. Cklist Dec. ¶¶ 427-437. The following PMO metrics are referenced relative to this representation: (1) PR-4-02; PR-6-01; MR-2-02; MR-2-03; MR-3-01; MR-3-02; MR-4-01; MR-4-02; MR-4-03; MR-4-08; MR-5-01.

Prior to the *en banc* hearings held in these proceedings, Verizon PA took the position that notwithstanding the decision of the United States Court of Appeals for the District of Columbia Circuit in Ass'n. of Comm. Enterprises v. FCC, 235 F.3d 662 (D.C. Cir. 2001) (“ASCENT”),⁶⁰⁷ its data service affiliate, VADI, did not have the same obligation as the affiliated LEC, to provide the wholesale discount to resold advanced services, i.e., xDSL. The position was based on circumstances identified in the FCC's

⁶⁰⁷ In ASCENT, the District of Columbia Circuit Court concluded that the FCC could not permit an ILEC to avoid section 251(c) resale obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services. A letter requesting the FCC to re-open this docket to respond to this decision has been filed.

Advanced Services Order.⁶⁰⁸ In the Advanced Services Order, the FCC concluded that section 251(c)(4) of TA-96 does not apply where the incumbent LEC offers DSL services as an input component to ISPs who combine the DSL service with their own Internet service. The original position of Verizon PA was related to, but differed slightly, from the contention that was rejected by the District of Columbia Circuit that an affiliate would not be subject to the wholesale obligations. At the *en banc* hearings, this position was ameliorated, as counsel for VADI indicated that VADI had, as of April 14, 2001, revised its federal and state tariffs to indicate that VADI would offer the wholesale discount. See 4/26/01 Tr. at 263-264.

b. Other Parties' Comments

(1) ARC, Ascent, Covad, and Rhythms

ARC filed initial comments opposing Verizon PA's compliance with the resale checklist provisions of TA-96.⁶⁰⁹ ARC also filed a letter in lieu of a brief/final comments, reiterating its position.⁶¹⁰ ASCENT, on behalf of its members, filed Final Comments essentially supporting the position of ARC and primarily addressed to Verizon PA's provision and nondiscriminatory access to advanced services. ASCENT specifically reiterated ARC's experience regarding VADI's inability to provision new resold DSL lines at the time of the transfer of assets and facilities from Verizon PA. These operational shortcomings of VADI were "unreasonable and discriminatory" and violative of section 251(c)(4)(A), according to ASCENT's comments.⁶¹¹ ASCENT, as

⁶⁰⁸ In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, 14 FCC Rcd 19237 (Rel. November 9, 1999).

⁶⁰⁹ See ARC 2/12/01 comments

⁶¹⁰ See April 17, 2001, letter in lieu of brief submitted by Robin Cohn, Esquire.

⁶¹¹ ARC argued, similar to ASCENT and other participating CLECs, that Verizon's data affiliate assumes the parent's section 251 and 252 obligations for the provision of advanced services. See ARC 2/12/01

noted, reiterates the comments of ARC, and comments of Covad/Rhythms, that the transfer of advanced services capability to VADI has resulted in non-discriminatory access problems.

(2) Sprint/United

In its initial and final comments, Sprint repeats a concern that Verizon PA does not enable it to resell vertical features services. This dispute is over Sprint's ability to acquire stand-alone vertical features without paying for the associated dial tone line. This issue is pending in the Sprint/Verizon PA arbitration in Pennsylvania. Based on this observation, the issue raised by Sprint will not be addressed in the context of the section 271 application but will be deferred for consideration in the arbitration proceeding.

(3) AT&T

By correspondence dated May 31, 2001, AT&T advises this Commission that there are concerns relative to the manner by which Verizon PA's advanced data services affiliate, VADI, will be required to comply with the resale and unbundling obligations of 47 U.S.C. § 251(c)(3) and (4). AT&T states that notwithstanding the representation of counsel for VADI, that the issue of whether VADI is required to comply with the resale provisions of TA-96 is no longer contested, certain language in the PAPUC's Functional/Structural Separation Order could be read to suggest that VADI has met that requirement. Further, AT&T alleges that neither VADI nor Verizon PA have complied with ASCENT or TA-96 pertaining to resale of DSL services.

Specifically, AT&T states that while VADI indicated at the *en banc* hearings that

comments at 12, citing ASCENT “. . . [TA-96's] structure renders implausible the notion that a wholly owned affiliate providing telecommunications services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent, should be exempted from the duties of that ILEC parent.”

it amended its federal tariff⁶¹² offering DSL for resale, the record indicates that its terms for resale render it “commercially unusable” for the following reasons: (1) VADI’s DSL is not available for resale if the CLEC also wants to resell Verizon PA’s voice service; (2) DSL is not available for resale if the CLEC wants to offer voice service through UNE-P arrangements; (3) DSL is not available for resale if the CLEC wants to offer DSL on a stand alone basis; and (4) DSL is not available for resale under any circumstance if the CLEC wants to offer the customer a combination of voice and DSL services matching what Verizon PA/VADI offer its customers. Thus, AT&T argues that the only scenario under which VADI will resell DSL is if Verizon PA retains the customer’s voice service. And, even in this instance, AT&T avers that if a customer later decides to switch carriers but retain the CLEC’s resold DSL, VADI will unilaterally disconnect the CLEC’s resold DSL arrangement the moment any carrier other than Verizon PA is responsible for the voice service.

(4) OTS

OTS, in its final comments, asserts that Verizon PA did not meet this checklist item due to “embargoes” opposed against resellers for amounts allegedly owed for wholesale services and which amounts may be in dispute. To resolve its concern, OTS proposes the following: Verizon PA’s written policy should be modified to expressly state that Verizon PA will not embargo or suspend a reseller’s telecommunications service to its end-users for non-payment of non-telecommunications charges or for charges that are not tariffed by the PAPUC. See Affid. of David Lewis, attached to OTS 4/18/01 Comments).

⁶¹² AT&T also advises that it can find no state tariff which applies as Verizon PA has only tariffed DLS resale at the federal level. (May 31, 2001 Letter, n. 4).

4. Discussion

a. Resale Obligations

At the time the FCC considered the Verizon Massachusetts application, it noted that the ASCENT mandate had not issued at the time the application was filed. Therefore, the FCC concluded that the decision was not relevant to its analysis of the checklist compliance in the context of that proceeding. See BA MA 271 Order at ¶ 219.

In the application under consideration in Pennsylvania, there has been extensive debate between counsel for Verizon PA, and, *inter alia*, AT&T, regarding the proper interpretation of ASCENT and its impact on compliance with the resale provisions of TA-96. Resale of DSL is an important issue to the CLECs in that the CLECs who are targeting the residential market want to be able to bundle DSL with voice service, without going through too much physical work on the line. Now, for example, a CLEC such as MCIW can transfer a customer's voice service by UNE-P or resale, and the transaction is completely a computer/billing transaction. Under the position articulated by Verizon and VADI, that kind of seamless transfer would not be possible if the customer asked to transfer her DSL as well as voice service. Verizon would have a virtual monopoly on the ability to bundle DSL and voice.

During the *en banc* hearings held April 26, 2001, counsel for VADI indicated that VADI had, as of April 14, 2001, revised its federal and state tariffs committing it to providing advanced services to CLECs with the pertinent wholesale discount. In light of the statements of counsel regarding the filing of this tariff, it appeared that Verizon PA no longer contested the applicability of the wholesale discount to advanced services provided by VADI. This concession, however, as noted by the subsequent letter of AT&T, did not necessarily remove the contested nature of this issue from the section 271

proceedings.⁶¹³ The May 31, 2001 Letter of AT&T and the allegations contained therein cause us to closely examine whether the prohibitions on the resale of DSL by VADI and Verizon PA are compliant with TA-96. Verizon PA filed a responsive letter dated June 5, 2001 which responded to these allegations.

Verizon PA has committed to making its retail services available to CLECs at wholesale rates through interconnection agreements, and tariffs filed in compliance with our determinations in the Global Order. There are no adverse comments, and we find no evidence, that Verizon PA does not provide for the wholesale discount to all retail services, including Customer Specific Pricing Arrangements (“CSA”s), grandfathered services, and promotional offerings or that Verizon PA imposes unreasonable resale restrictions on any of its services.

The majority of concerns relate to the relationship between Verizon PA and its advanced data affiliate, VADI, and non-discriminatory access to DSL and consistency with the resale provisions of TA-96. Providing advanced services through a separate affiliate was recognized by the FCC as a tool to reduce the ability of a BOC to discriminate against competing carriers with respect to xDSL services. BA NY 271 Order at ¶ 332. Under this structure, the BOC would be required to treat rival providers of advanced services the same way that it treats its own separate affiliate. Because the BOC’s advanced services affiliate would use the same processes as competitors to conduct such activities as ordering loops, and pay an equivalent price for facilities and services, the creation of the affiliate was thought to ensure a level playing field between the BOC and its advanced services competitors. Id.

⁶¹³ ARC also indicated concern with some Verizon PA policies regarding broadband and advanced services. We believe these issues, to the extent not addressed in our discussion under Cklist item 4, will best be addressed in the NGDLC Collaborative ordered in our Functional Structural Separation Order of April 11, 2001.

The commenting CLECs express a concern that the advanced data affiliate possesses an inherent advantage with regard to advanced services, particularly, xDSL, in that it does not have the same impediments regarding stand alone loops and related services. The FCC noted that “[w]e view it as critical that a BOC provide all forms of advanced services through a separate affiliate, and not just ADSL, so the affiliate would need to obtain stand-alone loops from the BOC in order to provide all varieties of advanced services. See BA NY 271 Order at fn. 1037. Thus, the comments of ARC, and other CLECs are concerned with instances of conduct by Verizon PA that would suggest that they are not being afforded as meaningful an opportunity to compete in this area as VADI. We specifically defer herein to our comments on advanced services in the pertinent sections addressing xDSL and UNEs. With regard to Checklist item 14, we conclude that the requirements of TA-96 and related FCC determinations would only be met consistent with the following clarifications that are directed to Verizon PA and to VADI.

ASCENT clearly stands for the proposition that the ILEC may not, consistent with TA-96, avoid the obligations of section 251(c), through the creation of an affiliate for the provision of advanced data services. That court concluded:

For that reason the Commission may not permit an ILEC to avoid section 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services. Whether one concludes that the Commission has actually forbore or whether its interpretation of “successor or assign” is unreasonable, the conclusion is the same: The Commission’s interpretation of the Act’s structure is unreasonable.

Section 251(c) of TA-96, encompasses “[a]dditional obligations” of the ILEC which do not merely pertain to the duty to apply a wholesale discount to a resold telecommunications service. Thus, the allegations raised by AT&T in its May 31, 2001, letter, occasion the need for this Commission to clarify our interpretation of the ASCENT decision.

This Commission interprets ASCENT as prohibiting the avoidance of any ILEC obligations arising under section 251(c) of TA-96, based on the creation of an affiliate. To the extent that a CLEC would have an entitlement arising under TA-96 regarding any obligation of section 251(c), that obligation may not, consistent with federal law, be avoided merely as a result of the creation of an advanced data service affiliate.

We also note that VADI has assumed responsibilities for compliance with Chapter 30 of the Public Utility Code, 66 Pa. C.S. § 3001-3009. At the April 26, 2001, *en banc* hearing, VADI indicated that it would carry out the responsibilities of the ILEC made pursuant to state law:

MR. CULLINA: Thank you. I appreciate the invitation to respond. In the February 28th technical conference, we did state that we would carry out the Chapter 30 obligation equitably throughout the state and we're doing that today.

(4/26/01 Tr. at 240.)

On the basis of the record as developed in this proceeding, and without prejudice to the development of these issues in future PAPUC proceedings and collaboratives, we conclude that where Verizon PA provides voice and VADI provides data services on same line, VADI is obligated to resell data service with the applicable wholesale discount.

In the circumstance of UNE-P provided voice service on a line leased from Verizon PA, VADI does not provide DSL on a resale basis. AT&T claims non-compliance with Checklist item 14 on this basis. On consideration of the position of AT&T, we shall reject its view. We make no adverse recommendation on compliance with the resale obligations because for VADI to resell DSL on the line, a contractual

agreement is needed between the UNE-P CLEC and VADI. Section 271 does not require VADI to contract with other UNE-P providers. Further, we assume that there could be technical and operational considerations relative to the UNE-P arrangement, i.e., the EEL, which could further have an effect on the provision of service under the UNE-P scenario. Therefore, we do not find non-compliance based on this issue.

With regard to stand-alone x-DSL capable loop, AT&T claims non-compliance. VADI does not, at this time, have a retail offering for stand-alone DSL service. VADI does not provide DSL on a resale basis based primarily on an economic justification argument. They do not lease whole loops to provide DSL. Also, there is no independent obligation on Verizon PA/VADI to provide stand-alone DSL as a retail offering. Based on these considerations, we do not find non-compliance at this juncture.

Finally, where Verizon PA resells the voice portion of the loop, VADI will not resell the data portion. AT&T claims non-compliance. Verizon PA states that section 251(c)(4) requires that it offer for resale only those services it provides at retail and that, pursuant to its tariff, the DSL service that VADI offers “at retail” is defined as available only where the incumbent carrier provides line sharing. Verizon PA also points out that the FCC has not required line sharing over resold voice lines. Verizon PA Letter dated June 5, 2001. Nevertheless, Verizon PA’s witness testified at the *en banc* hearings (4/26/01 Tr. at 266) that Verizon PA and the CLECs were working out the operational issues associated with line sharing over resold voice lines in the NY collaborative, and that when completed, Verizon PA would roll out this product in New York, Pennsylvania and its other states. We find that Verizon PA has met its current resale obligations for DSL.

The concerns articulated by OTS regarding Verizon PA’s policy to embargo the services to resellers based on disputed matters have not been resolved. Although OTS raises this issue as one pertaining to resale, we do not view this as a compliance issue